APPENDIX A

Findings of Fact and Conclusions of Law

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

Civil No. 3988-T

TABACALERA SEVERIANO JORGE, S.A.,
a Cuban corporation, and
SEVERIANO JORGE,

Plaintiffs,

vs.

STANDARD CIGAR COMPANY,
a Florida corporation,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action involves the legal effect of the intervention and take-over, in Cuba, by the Castro Government of Cuba of the plaintiff, Tabacalera Severiano Jorge, S.A. (hereinafter referred to as "Tabacalera"), a Cuban corporation whose business and assets were located in that country, and whose stockholders, directors and officers were Cuban citizens and nationals.

In July 1960, Tabacalera sold and delivered in Havana, Cuba, three separate shipments of leaf tobacco to the defendant, Standard Cigar Company, a Florida

corporation, for the aggregate sum of $100,894.28. The purchase price of the tobacco was to be paid in Havana.

On September 15, 1960, the Cuban Government intervened and took over Tabacalera, and an interventor was appointed who took control and management of Tabacalera and its assets. The interventor demanded that the defendant pay the aforementioned account receivable or debt in due course to Tabacalera in Havana, and advised the defendant that no one in the United States had authority to collect the account in Tabacalera's name.

Messrs. Severiano Jorge and Jose M. Romano, two of the stockholders, directors and officers who were ousted from the management and control of Tabacalera as a result of the intervention, requested the defendant to pay the account receivable or debt to Tabacalera in their care in Miami, Florida. When their requests were not complied with, this action was caused to be instituted in this court in October 1960, in the name of Tabacalera at the instigation of Mr. Jorge or Mr. Romano, or both.

The defendant moved to dismiss the complaint upon the ground of *forum non conveniens,* or, in the alternative moved the court to abstain from exercising jurisdiction herein because the matter was controlled solely by laws, resolutions, proclamations and decrees of the Cuban Government.

On April 1, 1961, a purported assignment from Tabacalera to Mr. Jorge, individually, of the account receivable was executed in the name of Tabacalera by Mr. Romano, who described himself as vice president and attorney-in-fact of the Cuban corporation.

The defendant filed its answer on April 5, 1961.

A final judgment was entered May 22, 1961, by the Honorable George W. Whitehurst, District Judge, dismissing the action on the ground of *forum non conveniens* and alluding to the act of state doctrine.

The United States Court of Appeals for the Fifth Circuit, on October 17, 1962, reversed the final judgment of the District Court, and held that neither of the aforementioned doctrines was applicable. *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Company,* 311 F.2d 438 (5 Cir. 1962); *Menendez Rodriguez v. Pan American Life Insurance Co.,* 311 F.2d 429 (5 Cir. 1962).

The Supreme Court of the United States, in *Standard Cigar Co. v. Tabacalera Severiano Jorge, S.A.,* 376 U.S. 780, 84 S.Ct. 1131, 12 L.Ed. 2d 82 (1964), vacated the opinion and judgment of the Court of Appeals and remanded the case to the Court of Appeals for further consideration in the light of *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed. 2d 804 (1964).

The Court of Appeals further considered the matter, and thereafter remanded the case to this court "to afford the parties opportunity to be heard upon development of such record as is found necessary by the District Court for its determination of the applicability of the Act of State doctrine to this complaint in accordance with the opinion of this court." *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Company,* 340 F.2d 708 (5 Cir. 1965); *Menendez Rodriguez v. Pan American Life Insurance Co.,* 340 F.2d 707 (5 Cir. 1965).

In this court an amended complaint was filed wherein Mr. Jorge, a citizen and national of Cuba now residing in Florida, was added as a party plaintiff. Mr. Jorge claims to be the assignee of and seeks to collect herein the indebtedness of the defendant to Tabacalera.

The defendant answered the amended complaint asserting, among other things, that the contracts for the sale and purchase of the tobacco were made and performed or to be performed in Cuba; that, under the act of state doctrine, this court should not sit in judgment on the acts of the Cuban Government in intervening or nationalizing, in Cuba, Tabacalera and taking over its business and assets, including the account re-

ceivable involved in this suit, that the stockholders, directors and officers of Tabacalera who were dispossessed and removed from authority and control of the Cuban corporation as a result of the intervention or nationalization and their purported assignee have no right or authority to maintain this action in the name of Tabacalera to recover the said account receivable; that the transactions and occurrenees involved herein are governed and controlled by the laws, resolutions, decrees and actions of the Cuban Government; that this action should be dismissed under the act of state doctrine or the doctrine of *forum non conveniens,* or both.

The Court of Appeals twice has held that the complaint cannot be dismissed upon the doctrine of *forum non conveniens.* The mandate to this court does not require or permit a determination of the applicability of that doctrine, and this court will not adjudicate that issue.

The parties have been afforded the opportunity to develop the record with respect to the applicability of the act of state doctrine. Depositions have been taken, admissions have been made, and affidavits have been filed. The plaintiffs have moved for a summary judgment. The defendant says that it, if any party, is entitled to summary judgment. The parties entered into a pre-trial stipulation. A pre-trial conference has been held. The briefs and oral arguments of the parties with respect to all pending matters have been considered.

In the light of the foregoing, this court makes the following findings of fact and conclusions of law concerning the applicability of the act of state doctrine.

FINDINGS OF FACT

The plaintiff, Tabacalera Severiano Jorge, S.A., a a corporation, was organized in 1954 under the laws of the Republic of Cuba. At all times material herein its principal place of business was in Havana, Cuba, it was engaged in the business of selling leaf tobacco for use in the manufacture of cigars, and its stockholders, directors and officers were Cuban citizens and nationals.

Tabacalera never qualified to do business, or had a place of business, in Florida or elsewhere in the United States.

The individual plaintiff, Severiano Jorge, is a citizen and national of Cuba, now residing in Miami, Florida. He claims to be the equitable owner of substantially all of the shares of capital stock of Tabacalera.

The defendant, Standard Cigar Company, is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Tampa, Florida. The defendant was at all times material herein and is engaged in the business of manufacturing cigars at its Tampa plant.

Since January 1, 1959, the Revolutionary Government of the Republic of Cuba, of which Fidel Castro is the premier, has been in power and control in Cuba. Since January 7, 1959, the Revolutionary Government has been and is recognized by the United States Government as the sovereign and legal government of the Republic of Cuba.

In July 1960, Tabacalera sold and delivered to the defendant, in Havana, Cuba; three shipments of leaf tobacco described as follows:

Date	Shipment	Sale and Purchase Price
July 1, 1960	7	$23,059.75
July 12, 1960	8	30,899.42
July 25, 1960	9	46,935.11
	Total	$100,894.28

The purchase price of each of the aforementioned shipments was payable by the defendant to Tabacalera in Havana, Cuba. Evidence introduced by the defendant shows that the purchase price for each shipment was due 90 to 120 days after the date of each shipment. Evidence introduced by the plaintiffs shows that the purchase price for each shipment was payable immediately upon the delivery thereof.

About August 12, 1960, Mr. Jorge left Cuba and never returned there. About September 1, 1960, Mr. Jose M. Romano, who was a vice president and the treasurer of Tabacalera and a citizen and national of Cuba, left Cuba, established a residence in Miami and never returned to his country.

Tabacalera continued in business in Cuba under the management of its stockholders, directors and officers, until September 15, 1960, when Tabacalera, along with the other corporations, partnerships and firms constituting the Cuban tobacco industry, were intervened and taken over by the Castro Government.

The intervention and seizure of the Cuban tobacco industry, including Tabacalera, were made pursuant to the authority of Cuban Law No. 647, of November 24, 1959, and Resolution No. 20260, of the Cuban Ministry of Labor, dated September 15, 1960.

Under Cuban Law No. 647, the Cuban Government was authorized to appoint an interventor for any corporation, partnership or business intervened. The law vested any such interventor with all the powers required to manage and direct the concern or enterprise intervened, and with all the authority regularly exercised by executives of the intervened party. Further, under the law, the interventor became subrogated to the standing, powers and privileges of the concern or enterprise intervened.

Resolution No. 20260 appointed Armando Lobato Alvarez the interventor for Tabacalera. Under Law No. 647 and the resolution, he was vested with complete

possession and control of Tabacalera as a business enterprise to the exclusion of the shareholders, directors, officers or other persons who would otherwise manage and conduct the affairs of the corporation.

In addition to the broad grant of powers vested in the interventor by Law No. 647, the resolution of intervention specifically bestowed upon the interventor, among many other powers, the authority to represent Tabacalera legally in courts and out of courts and any other facility necessary for the development of its function.

The purpose of the intervention and seizure of the Cuban tobacco industry by the Cuban Government, as stated in Resolution No. 20260, was to increase employment, to improve the quality of tobacco products, to guarantee the supply of tobacco to customary markets, to take over businesses which had been abandoned leaving numerous debts and many workers unemployed, and to normalize the situation in the tobacco industry, insuring the stability of workers and their jobs and the production of tobacco and tobacco products in general.

At the time Tabacalera was intervened, Messrs. Jorge and Romano had fled from Cuba to Florida and Tabacalera was heavily indebted to growers from whom it previously had purchased leaf tobacco during March, April and May 1960 and to others, including banks, in the aggregate amount of approximately $2,000,000.00.

For five or six weeks after the intervention, the interventor continued to do business and to sell and ship leaf tobacco in the name of Tabacalera. The interventor wrote letters to customers of Tabacalera soliciting new business and directing such customers to pay to the corporation in Havana, Cuba, all sums due for tobacco purchased before the intervention.

On September 16, 1960, the day following the intervention, from Miami Mr. Jorge wrote to the defendant on the letterhead of Tabacalera requesting that the

balance due for the last several shipments of tobacco be made to Tabacalera at Miami in his care as agent for it under a power of attorney executed by Tabacalera authorizing him to collect moneys due it.

On October 5, 1960, from Havana, the interventor wrote to the defendant on the letterhead of Tabacalera stating that the Cuban Government desired to continue to sell leaf tobacco to the defendant, forwarding a copy of the defendant's statement of account with Tabacalera, requesting that the same be settled in due time by remittances directly to the corporation in Havana, and informing the defendant that no person or entity whatsoever was authorized to collect the account in Tabacalera's name in the United States.

It was the position of the interventor that the Cuban Government was entitled to collect the account of the defendant and the accounts of other customers of Tabacalera who had purchased tobacco before the intervention.

On October 8, 1960, from Miami, Mr. Romano wrote to the defendant, on the letterhead of Tabacalera, sending a statement of the account for the balance due by the defendant to Tabacalera.

On October 12, 1960, the Miami attorneys who are prosecuting this litigation for the plaintiffs wrote to the defendant regarding the balance due from the defendant to Tabacalera, recognizing that the interventor laid claim to the balances due and urging the defendant not to recognize the claim of the interventor.

The defendant did not pay Tabacalera in care of the interventor in Havana or in care of Mr. Jorge in Miami. Thereupon, on October 26, 1960, Mr. Jorge or Mr. Romano, or both, caused this suit to be filed in the name of Tabacalera, as plaintiff.

On September 15, 1960, the interventor actually took over the management and control of Tabacalera, including its warehouses, the leaf tobacco in its ware-

houses, its offices, furniture, equipment, books, records, bank accounts and all other properties and assets. The interventor ousted those who had been in management and control of the corporation prior to the intervention, and those ousted have never had any further control or management of Tabacalera.

For several weeks the interventor continued to do business and to sell and ship leaf tobacco in the name of Tabacalera, but, thereafter, the business was conducted in the name of an agency of the Cuban Government. The brass nameplate bearing the corporation's name was removed from the building it had occupied, and the number "No. 14" was assigned to the building. The interventor continued to do business at the premises of Tabacalera, using the books, records, machinery, equipment and other property which had belonged to the corporation. The leaf tobacco business, however, was conducted in the name of the Ministry of Exterior Commerce.

While this suit was pending, on April 1, 1961, Mr. Romano, describing himself as vice president and attorney-in-fact of Tabacalera, executed in the name of Tabacalera a purported assignment to Mr. Jorge, individually, of all of Tabacalera's right, title, interest, claim and demand in and to certain accounts receivable and all sums due thereunder owing by the Antonio Company, a Florida corporation, and Standard Cigar Company, a Florida corporation.

Thereafter, on April 3, 1961, Mr. Jorge caused a suit to be filed in a state court in Florida in the names of Tabacalera Severiano Jorge, S.A., a Cuban corporation, and Severiano Jorge against the Antonio Company, a Florida corporation, Standard Cigar Company, a Florida corporation, and the Republic of Cuba. In that suit the plaintiffs sought a declaratory decree as to the rights and obligations of the parties therein, including the rights of Mr. Jorge as alleged sole stockholder of Tabacalera and assignee of the latter's claims against Antonio Company and Standard Cigar Company.

Shortly after the state court suit was instituted, and on May 21, 1961, Honorable George W. Whitehurst, one of the judges of this court, dismissed the case at bar on the ground of *forum non conveniens* and alluding to the act of state doctrine. An appeal ensued. The federal appellate course taken by this action has hereinbefore been described.

While the appeal in this federal court action was pending, the state court suit was dismissed, on November 28, 1961, upon the ground of *forum non conveniens* and because the actions of the Republic of Cuba in intervening and seizing Tabacalera were not reviewable by the state court under the act of state doctrine. *Jorge v. Antonio Company,* 19 Fla. Supp. 101 (Cir. Ct., Hillsborough County, Fla., 1961). The plaintiffs in the state court suit appealed, and the state appellate court determined to suspend proceedings in the state court appeal until this action in the federal court was tried and determined. *Jorge v. Antonio Company,* 151 So. 2d 467 (Dist. Ct. App. Fla., 2d Dist., 1963).

Throughout all the aforementioned litigation and until the present time, the Cuban Government, through its interventor or otherwise, has remained continuously in management and control of Tabacalera and its properties and assets. Although "intervention" procedure does not appear to effectuate a formal transfer of title from Tabacalera, its stockholders, directors and officers to the Cuban Government, the end result is indistinguishable in practical result from complete confiscation and nationalization. For more than six years the stockholders, directors and officers of Tabacalera at the time of its intervention have been ousted, without their consent, from all of the properties and excluded from any participation in the business of Tabacalera. Their rights to any receipts and profits have been eliminated. No compensation has been provided to them for their interest as stockholders or otherwise.

The Cuban Government has continued in the leaf tobacco business, trading domestically in Cuba and internationally, using the properties and facilities which

belonged to Tabacalera at the time of the intervention. It has collected accounts receivable due for tobacco sold before and after the intervention. Until the United States proclaimed an embargo on trade with Cuba, Proclamation No. 3447, February 6, 1962, 27 C.F.R.1085, the Cuban Government sold and delivered tobacco in Cuba and in the United States to purchasers who used the same in this country.

The Cuban Government, through its interventor or otherwise, did not institute or authorize the institution and maintenance of this action. Likewise, the Cuban Government did not assign or authorize the assignment by Tabacalera to Mr. Jorge of the account receivable by Tabacalera from the defendant. The Cuban Government has never ratified, approved or confirmed the institution and maintenance of this action or the assignment of the said account receivable to Mr. Jorge.

CONCLUSIONS OF LAW

The classic American statement of the act of state doctrine is that every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 416, 84 S.Ct. 923, 934, 11 L.Ed.2d 804 (1964); *Underhill v. Hernandez,* 168 U.S. 250, 252, 18 S.Ct. 83, 84, 42 L.Ed. 456 (1897); *American Banand Co. v. United Fruit Co.,* 213 U.S. 347, 29 S.Ct. 511, 53 L.Ed. 826 (1909); *Oetjen v. Central Leather Co.,* 246 U.S. 297, 38 S.Ct. 309, 62 L.Ed. 726 (1917); *Ricaud v. American Metal Co.,* 246 U.S. 304, 38 S.Ct. 312, 62 L.Ed. 733 (1917); *Shapleigh v. Mier,* 299 U.S. 468, 57 S.Ct. 261, 81 L.Ed. 355 (1937); *United States v. Belmont,* 301 U.S. 324, 57 S.Ct. 758, 81 L.Ed. 1134 (1937); *United States v. Pink,* 315 U.S. 203, 62 S.Ct. 552, 86 L.Ed. 796 (1942).

The act of state doctrine in its traditional formulation precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory. *Banco Nacional de Cuba v. Sabbatino, supra.*

Continuously since January 7, 1959, the United States Government has recognized and presently recognizes the Revolutionary Government of the Republic of Cuba, headed by Fidel Castro, as the legal and official government of Cuba.

The corporate plaintiff, Tabacalera, was an artificial entity, a creature of Cuban law, which could exist only by virtue of such law, and the rights, powers and authority of its stockholders, directors and officers must be determined by Cuban law. *Russian Reinsurance Co. v. Stoddard,* 240 N.Y. 149, 147 N.E. 703, 707, 708 (1925).

Tabacalera's domicile, place or places of business, properties and assets were solely in Cuba. Its stockholders, directors and officers were citizens and nationals of that country.

The intervention and take-over of Tabacalera, in Cuba, by the Cuban Government and the ouster of its stockholders, directors and officers from any management and control of the corporation clearly were public acts of state of Cuba.

What another country has done in the way of taking over property of its nationals, and especially of its corporations, is not a matter for judicial consideration here. Such nationals must look to their own government for any redress to which they may be entitled. *United States v. Belmont*, 301 U.S. 324, 332, 57 S.Ct. 758, 761, 81 L.Ed. 1134 (1937); *United States v. Pink*, 315 U.S. 203, 62 S.Ct. 552, 86 L.Ed. 796 (1942); *Steingut v. Guaranty Trust Co. of New York*, 58 F.Supp. 623 (D.C.N.Y. 1944), *aff'd* 161 F.2d 571 (2 Cir. 1947), *cert. dismissed*, 332 U.S. 753, 68 S.Ct. 81, 89, 90, 92 L.Ed. 339 (1947), *cert. den.* 332 U.S. 807, 68 S.Ct. 106, 92 L.Ed. 385 (1947).

No question of international law is involved in this action, because the acts of a state directed against its own nationals do not give rise to questions of international law. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 433, 84 S.Ct. 923, 943, footnote 37 (1964); *Banco Nacional de Cuba v. Sabbatino*, 307 F.2d 845, 861 (2 Cir. 1962), reversed on other grounds, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed. 2d 804 (1964); Zander. The Act of State Doctrine, 53 Am. J. Int'l Law 826, 836 (1959); *F. Palacio y Compania, S.A., et al. v. Gilbert P. Brush, et al.*, Case No. 61 Civ. 2299 (U.S.D.C., S.D.N.Y. 1966); *United States v. Belmont*, 301 U.S. 324, 332, 57 S.Ct. 758, 761, 81 L.Ed. 1134 (1937); *Pons v. Republic of Cuba*, 294 F.2d 925 (D.C. Cir. 1961) *cert. den.*, 368 U.S. 960, 82 S.Ct. 406, 7 L.Ed. 2d (1962); *M. Salimoff & Co. v. Standard Oil Co.*, 262 N.Y. 220, 186 N.E. 679 (1933).

Since the intervention and take-over of Tabacalera by the Cuban Government were not contrary to international law, the Hickenlooper Amendment to the Foreign Assistance Act of 1964, 22 U.S.C. § 2370 (e) (2) is not applicable to such acts.

The act of state doctrine is applicable herein, and proscribes this court from questioning the acts of the Cuban Government pursuant to which Tabacalera was intervened and its property and assets were taken over.

The legal effect of the intervention and later confiscation or nationalization of Tabacalera and its property and assets by the Cuban Government was to vest in such government, through its interventor or otherwise, the sole and exclusive right to demand payment of, to collect and to sue in the name of Tabacalera or otherwise to collect the account receivable which Tabacalera acquired and owned as a result of the sale of the three shipments of tobacco to the defendant.

The contracts covering the sale and purchase of the shipments of leaf tobacco involved were made in Cuba. Pursuant to the contracts, the tobacco was delivered by Tabacalera and accepted by the defendant in Cuba. The purchase price of the tobacco, whenever due, was to be paid to Tabacalera in Cuba. The situs of the contracts was in Cuba, and the rights and obligations of the parties thereto must be determined by Cuban law.

Florida and the United States had no contacts with the contracts and transactions which are relevant, material or of any consequence herein.

The sales and purchases of tobacco involved herein resulted in an account receivable or debt in connection with which Tabacalera was the creditor and the defendant was the debtor.

An account receivable is the right to receive payment of a debt, is a chose in action arising out of contract and is intangible personal property. *Boulevard Nat. Bank of Miami v. Air Metals Indus.*, 176 So.2d 94 (Fla. 1965).

The situs of intangible personal property is at the domicile of the owner. *First Nat. Bank of Boston v. State of Maine,* 284 U.S. 312, 329, 52 S.Ct. 174, 177, 76

L.Ed. 313 (1932); *Campbell v. Bagley,* 276 F.2d 28, 33 (5 Cir. 1960); *Marteney v. United States,* 245 F.2d 135 (10 Cir. 1957); *Investment and Sec. Co. v. United States,* 140 F.2d 894, 896 (9 Cir. 1944).

Florida holds to the foregoing rule. *Beverley Beach Properties v. Nelson,* 68 So.2d 604, 611 (Fla. 1953); *State ex rel United States Sugar Corporation v. Gay,* 46 So.2d 165 (Fla. 1950); *State ex rel Seaboard Air Line Railroad v. Gay,* 160 Fla. 445, 35 So.2d 403 (1948); *Smith v. Lummus,* 149 Fla. 660, 6 So.2d 625, 627, 628 (1942); *Wood v. Ford,* 148 Fla. 66, 3 So.2d 490, 495 (1941.)

The situs of an account receivable or debt is at the domicile of the creditor. *Cleveland, etc., R.R. Co. v. Pennsylvania,* 15 Wall. 300, 320, 21 L.Ed. 179, 187 (1873); *Farmers' Loan & Trust Co. v. State of Minnesota,* 280 U.S. 204, 50 S.Ct. 98, 74 L.Ed. 371, 65 A.L.R. 1000 (1930); *Vogel v. New York Life Ins. Co.,* 55 F.2d 205 (5 Cir. 1932), *cert. den.* 287 U.S. 604, 53 S.Ct. 9, 77 L.Ed. 525 (1932); *Little Audrey's Transportation Company v. Beverley Bank,* 236 F.Supp. 350 (S.D. Ill. 1964); *United States v. Royce Shoe Co.,* 137 F.Supp. 786 (N.H. 1956).

In *Cleveland, etc., R.R. Co. v. Pennsylvania,* 15 Wall. 300, 320, 21 L.Ed. 179, 187 (1873), the Supreme Court of the United States said:

> "Corporations may be taxed, like natural persons, upon their property and business. But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors, is simply to misuse terms. *All the property there can be, in the nature of things, in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be.*

Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations in numerous adjudications, but no number of authorities and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement."
(Emphasis supplied)

The foregoing statement was quoted with approval in *Farmers' Loan & Trust Co. v. State of Minnesota,* 280 U.S. 204, 50 S.Ct. 98, 74 L.Ed. 371, 65 A.L.R. 1000 (1930).

In *Vogel v. New York Life Ins. Co.,* 55 F.2d 205 (5 Cir. 1932), the United States Court of Appeals for the Fifth Circuit, in considering the situs of two life insurance policies issued in Texas insuring the life of a man who died while domiciled in Germany and payable to the decedent's executors, administrators and assigns, said, at p. 208:

"* * * Choses in action, such as these policies, are sometimes considered as having their situs at the domicile of the debtor, especially for purposes of their enforcement. They may be there garnisheed and attached. Chicago, R.I. & P.R.R. Co. v. Sturm, 174 U.S. 710, 19 S.Ct. 797, 43 L.Ed. 1144. Simple contract debts are there bona notabilia for the purpose of a nondomiciliary administration. 11 R.C.L., Excrs. and Admrs. § 67; Wyman v. Halstead, 109 U.S. 654, 3 S.Ct. 417, 27 L.Ed. 1068. *But as respects ownership of and the transfer of title to them, such choses are referred to the domicile of the owner, as in taxing ownership,* Cleveland, etc., R.R. Co. v. Pennsylvania, 15 Wall. 300, 21 L.Ed. 179; *or its transfer,* Farmers Loan & Trust Co. v. Minnesota, 280 U.S. 204, 50 S.Ct. 98, 74 L.Ed. 371, 65 A.L.R. 1000; Blodgett v. Silberman, 277 U.S. 1, 48 S.Ct. 410, 72 L.Ed. 749. * * * *"
(Emphasis supplied)

Although an account receivable may be enforced or sued upon at the domicile of the debtor, its situs as respects ownership and the transfer of title thereto is at the domicile of the creditor. The situs of the account receivable involved in this action was in Cuba at the domicile of Tabacalera. Whether due prior to or after the intervention, such account receivable was an asset, in Cuba, of Tabacalera.

The intervention and nationalization of Tabacalera by the Cuban Government did not purport to effect or effect property located in the United States. Tabacalera was a Cuban corporation, and its physical properties and tangible assets were in Cuba. As previously stated, the situs of the account receivable involved was in Cuba at the domicile of Tabacalera. There is no question here of giving extra-territorial effect to a confiscatory decree of a foreign state. This court must give effect to the acts of state of the Cuban Government, committed in Cuba and relating to intangible personal property situated there.

The basic issue in this action—whether the Cuban Government, through its interventor or otherwise, has or the former stockholders, directors and officers of Tabacalera have the right, in the name of Tabacalera, to demand payment of, to collect and to sue to collect the account receivable involved—turns upon the effect of the intervention and nationalization of Tabacalera.

The Cuban Government, through its interventor, demanded that the defendant pay the account receivable to Tabacalera, in Cuba, and informed the defendant that no one in the United States had authority to collect the account in Tabacalera's name. It was the position of the Cuban Government that the intervention of Tabacalera gave the interventor the exclusive power, right and authority to collect the account receivable.

Were any test to be applied as to the effect of the intervention and nationalization of Tabacalera, particularly with respect to the right and authority of the

Cuban Government concerning the said account receivable, it would have to be what effect the intervention and nationalization would have if challenged in Cuba. *Banco Nacional de Cuba v. Sabbatino, supra.*

In *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 415, 84 S.Ct. 923, 933-934, 11 L.Ed. 2d 804 (1964), in discussing the effect of an expropriation decree of the Cuban Government upon tangible personal property situated in Cuba, the court said, in footnote 17:

> "The courts below properly declined to determine if issuance of the expropriation decree complied with the formal requisites of Cuban law. In dictum in Hudson v. Guestier, 4 Cranch 293, 294, 2 L.Ed. 625, Chief Justice Marshall declared that one nation must recognize the act of the sovereign power of another, so long as it has jurisdiction under international law, even if it is improper according to the internal law of the latter state. This principle has been followed in a number of cases. See, e.g., Banco de Espana v. Federal Reserve Bank, 114 F.2d 438, 443, 444 (C.A. 2d Cir.); Bernstein v. Van Heyghen Freres Societe Anonyme, 163 F.2d 246, 249 (C.A. 2d Cir.); Eastern States Petroleum Co. v. Asiatic Petroleum Corp., 28 F.Supp. 279 (D. C.S.D.N.Y.). But see Canada Southern R. Co. v. Gebhard, 109 U.S. 527, 3 S.Ct. 363, 27 L.Ed. 1020; cf Fremont v. United States, 17 How. 542, 15 L.Ed 241 (United States successor sovereign over land); Sabariego v. Maverick, 124 U.S. 261, 8 S.Ct. 461, 31 L.Ed. 430 (same); Shapleigh v. Mier, 299 U.S. 468, 57 S.Ct. 261, 81 L.Ed. 355 (same). *An inquiry by United States courts into the validity of an act of an official of a foreign state under the law of that state would not only be exceedingly difficult but, if wrongly made, would be likely to be highly offensive to the state in question.* Of course, such review can take place between States in our federal system, but in that instance there is similarity of legal structure and an impartial arbiter, this Court, applying the full faith and credit provision of the Federal Constitution. (Emphasis supplied)

"Another ground supports the resolution of this problem in the courts below. *Were any test to be applied it would have to be what effect the decree would have if challenged in Cuba. If no institution of legal authority would refuse to effectuate the decree, its "formal" status—here its argued invalidity if not properly published in the Official Gazette in Cuba—is irrelevant. It has not been seriously contended that the judicial institutions of Cuba would declare the decree invalid."* (Emphasis supplied)

The existence of Tabacalera, the authority of its stockholders, directors and officers, its right to sue and the devolution of title to its assets must all be determined by Cuban law. *Russian Reinsurance Co. v. Stoddard,* 240 N.Y. 149, 147 N.E. 703, 707, 708 (1925), supra.

It could not be seriously contended that the judicial institutions of Cuba would declare that the Cuban Government, through its interventor or otherwise, does not have the right to collect the account receivable in the name of Tabacalera or otherwise.

When the Cuban Government intervened and took over Tabacalera, pursuant to Cuban Law No. 647 and Resolution No. 20260, it, through its interventor, became vested with the sole and exclusive right to manage and control the corporation and its assets, including the account receivable involved herein. The Cuban Government succeeded to all rights of management and control of the corporation which had been possessed by the stockholders, directors and officers thereof prior to the intervention. The intervention terminated the right and authority of such stockholders, directors and officers to act for or on behalf of Tabacalera.

By virtue of the intervention and take over of Tabacalera, the Cuban Government, by its interventor, became vested with the sole right, in the name of Tabacalera, to demand payment of, to collect and to sue to collect the account receivable in question. Later, up-

on the confiscation or nationalization of Tabacalera and its assets, the Cuban Government succeeded to all rights of Tabacalera with respect to the account receivable.

The Cuban Government, by its interventor, demanded payment of the account receivable from the defendant, but it did not institute or authorize the institution and maintenance of this action on the account receivable. Likewise, the Cuban Government did not authorize the assignment of or assign the account receivable from Tabacalera to Mr. Jorge.

Those who instituted or caused the institution and maintenance of this action in the name of Tabacalera had no right or authority to do so. Further, Mr. Romano did not have any right or authority to execute on April 1, 1961, in the name of Tabacalera, as its vice president and attorney-in-fact, and to deliver to Mr. Jorge an assignment of the account receivable.

The act of state doctrine is applicable whether the actions of a foreign recognized sovereign are questioned directly in a suit in which such government is a party or are questioned collaterally in litigation between private citizens. *Underhill v. Hernandez,* 168 U.S. 250, 252, 18 S.Ct. 83, 42 L.Ed. 456 (1897); *Oetjen v. Central Leather Co.,* 246 U.S. 297, 38 S.Ct. 309, 62 L.Ed. 726 (1917); *Ricaud v. American Metal Co.,* 246 U.S. 304, 38 S.Ct. 312, 62 L.Ed. 733 (1917); *Bernstein v. Van Heyghen Freres Societe Anonyme,* 163 F.2d 246 (2 Cir. 1947), *cert. den.* 332 U.S. 772, 68 S.Ct. 88, 92 L.Ed. 357 (1947); *Frazier v. Foreign Bondholders Protective Council,* 283 App. Div. 44, 125 N.Y.S. 2d 900 (1953); *Lamont v. Travelers Insurance Co.,* 281 N.Y. 362, 24 N.E. 2d 81 (1939); *Telkes v. Hungarian National Museum,* 265 App. Div. 192, 38 N.Y.S. 2d 419 (1942).

The Executive Branch of the United States Government has not acted in any manner to indicate that United States Courts should refuse to give effect to the

intervention and nationalization acts of the Castro Government which do not violate international law or to indicate that the Executive Branch had no objection to a judicial testing of the validity of such acts by the courts of this country.

The pleadings, depositions, admissions on file, affidavits and pre-trial stipulation show that there is no genuine issue as to any material fact, that the act of state doctrine is applicable herein and that the defendant is entitled to a judgment as a matter of law. An appropriate final judgment will be entered accordingly.

DONE and ORDERED at Tampa, Florida, this 19th day of October, 1966.

/s/ JOSEPH P. LIEB

UNITED STATES DISTRICT JUDGE

APPENDIX B

OPINION IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 24320

TABACALERA SEVERIANO JORGE, S.A., and SEVERIANO JORGE,

Appellants,

versus

STANDARD CIGAR COMPANY,

Appellee.

Appeal from the United States District Court for the Middle District of Florida.

(March 18, 1968.)

Before TUTTLE and WISDOM, Circuit Judges, and HEEBE, District Judge.

TUTTLE, Circuit Judge: This is an appeal from a judgment by the trial court dismissing a suit by a Cuban corporation and/or its sole stockholder as assignee for

the purchase price of approximately $100,000 worth of tobacco sold and delivered to the Standard Cigar Company, of Tampa, Florida, a few months before the Cuban government "intervened" the plaintiff company in Havana. The trial court held that the act of the Cuban government in appointing an "interventor" on September 15, 1960, was "an act of state" which took away from the officers, directors and stockholders, as well as all other persons, whatever rights had theretofore been held by the corporation in the unpaid balance owed by the Tampa-based Standard Cigar Company; that the United States courts are bound to accept as binding on them under the "Act of State Doctrine," such adverse action by the Cuban government, and that, therefore, neither the corporation Tabacalera Severiano Jorge, nor Severiano Jorge, as assignee of the corporation, resident in the state of Florida, could recover the account in the United States courts.

Since the District Court disposed of the case by entering a summary judgment of dismissal, the facts, of course, are to be taken in the light most strongly in favor of the losing party, that is to say, the plaintiffs in the court below, the appellants here. Viewed in such light, the facts are as follows:

Prior to 1954, Severiano Jorge y Cepero, a resident of Havana, Cuba, was successfully engaged in the tobacco business operating a sole proprietorship. In 1954, he incorporated under the name Tabacalera Severiano Jorge, S.A., owning all the equitable interest in the stock of the corporation. As such stockholder he caused one Higinio Miguel Caso, a tobacco buyer, to be elected president. However, at the time of such election, the corporation, at a duly held stockholders meeting was directed to execute and deliver to him, and to his accountant, a vice-president and the treasurer of the new corporation, Jose Romano, a broad power of attorney. This power of attorney appears to be about as broad as can conceivably be devised to give to these two named persons as

much power as is normally enjoyed by the officers and directors of an American corporation. They included the following:

> "FIRST: Administer, rule and govern all of the estate of the firm TABACALERA SEVERIANO JORGE, SOCIEDAD ANONIMA, whether consisting of real or personal property, which they may today possess or in the future acquire; guard its conservation and development; hire and discharge employees considered unsuitable; check all work; improvements and repairs which they may deem necessary to be done; obtain the necessary licenses and certificates of habitability; set forth all new constructions, recording same in the Registry of Properties; assess and determine the rents of income therefrom, pay any and all taxes, water bills and other obligations affecting said real or personal property, as well as those expenses arising from said constructions, repairs and improvements, exercising due and diligent care as any zealous and capable administrator should.
>
> . . . .
>
> "THIRD: To deposit in withdrawal from banks, bankers, organizations or business enterprises, any monies which may be therein or thereafter deposited, authorizing the necessary mandates in order to endorse and collect any sums in favor of said constituent company; being allowed to borrow money in the name of said Company, with or without guarantee, including overdraws, maintaining overdraws in any account or accounts which the Company may have with any banking institution in this City and the Island, so that the empowered attorneys herein designated may exercise any and *all acts of administration and dominion over personal property, real property, movables, and any other kind of possession in the name of the company,* as well as accept drafts, discount same, protest

same, and obtain monies from any banking institution with which it maintains business relations, including the acceptance of monies through overdraws, with or without interest.

. . . .

"SIXTH: *To collect and receive all proceeds, amounts, terms, rents, dividends and profits of the said estate, and all other amounts, produce, effects, values and fees which may under any title or for any reason be due and owing now or in the future, subscribing to said receipts and securities.*

"SEVENTH: *To settle disputes with regard to claims, lawsuits and questions of interest to the constituent company, in the terms, manner and forms which they may deem convenient, or through legal or friendly claims arbitrators, having the power to enforce the fulfillment of their decisions and the payment of the fines.*"

(Emphasis supplied).

For several years prior to 1960, the corporation sold substantial quantities of tobacco to the Standard Cigar Company of Tampa, Florida. It acquired this tobacco by buying it from tobacco farmers in Cuba. The sales of tobacco to Standard were on account without any written agreement as to the time and place of payment. Between July 1 and July 25, 1960, Tabacalera sold and shipped tobacco to Standard for the sales price of $100,894.28. At about this same time Severiano Jorge left Havana and came to the United States, where he took up his residence. During the summer months of 1960, he solicited approximately one million dollars worth of additional sales for Tabacalera, none of which were filled prior to September 15th, the date of the intervention. In June, Jorge personally loaned to Tabacalera $75,000 of his own funds and in August advanced an additional $600,000. Both of these amounts were put

on deposit in the Havana branch of a New York bank. A substantial part of this sum was utilized by Tabacalera to pay tobacco growers for purchases that had been made from them in Cuba. Part was for payroll purposes. In his affidavit in support of the appellants' motion for summary judgment, Jorge asserts "the funds thus advanced were proceeds derived from the sale of my cattle ranch. It was understood by everyone, including Higinio Miguel Caso [the then president of the corporation], that I would be repaid for said advances out of the proceeds of the resale of the tobacco to the companies in the United States, including defendants herein."

No testimony disputing this statement is in the record.[1]

During the months of July and August, Jorge made demands on Standard Cigar Company in the name of Tabacalera for payment of the outstanding balance due to the corporation. In his affidavit Jorge stated:

> "In accordance with the long standing custom and practice of the tobacco industry in Cuba the purchase price for tobacco was due no later than the Monday following the buyer's acceptance. While I made certain limited exceptions which were granted only after negotiations therefor, the accounts of the defendants herein for the shipments made in July, 1960, were due and payable immediately upon the receipt of the tobacco by the purchasers. There was no custom, agreement or understanding between the corporation and these defendants that they would be allowed between 90 and 120 days after each of the shipments made in July, within which to pay the purchase price therefor."

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[1] While we mention this fact as a part of the total background of the case, our disposition of the case does not depend upon the existence of the informal arrangements here depicted.

The latter part of this affidavit was in response to an affidavit by Stanford Newman, president of the Standard Cigar Company. Newman alleged that the tobacco in question, "was purchased by purchase orders and accepted in Havana, Cuba, and was shipped f.o.b. Havana, Cuba, to the defendant in Tampa, Florida, as aforesaid. In accordance with the customs, agreements and understandings between the plaintiff and the defendant, the purchase price of each shipment was due and payable by the defendant to the plaintiff in Havana, Cuba, 90 to 120 days after each shipment."

Presumably the trial court considered that it was not relevant to the decision of the case that it resolve the conflict in this testimony, which on the one hand provided for payment well in advance of the "takeover" of September 15th, and which, on the other hand, provided for payment at a date that had not yet arrived when the interventor was put in charge in Havana. We agree that it is immaterial whether the payments were actually payable prior to September 15th or were owing but payable at a later date.

On the 15th day of September, 1960, the revolutionary government of the Republic of Cuba promulgated resolution number 20260 of its Ministry of Labor, by which it "intervened" the Cuban tobacco industry, including the plaintiff corporation. While it may be assumed that the revolutionary government, which, at the time, was all powerful in Cuba, could in actual effect have physically done just about what it wished to do with respect to any property or person within its territorial reach, we think it important that the precise powers given to the interventor named for this corporation be carefully studied. These powers are contained in a resolution published by the Cuban Minister of Labor. This resolution directs that interventors are appointed to do the following things:

"THIRD:—Substitute in position and degree, the Directors of the intended industries intervened, with the Interventors designated above, with the power to open bank accounts, open credit, accept, endorse discount or in any other form negotiate payments, letters or any other commercial documents, solicit or obtain credit, carry on the operation of buying or selling the National or foreign currencies, take money or loans with or without guarantees, stipulate type of interests, maturity, location of payments, class of currency and all other particulars esteemed convenient. Contract when considered opportune for payments of current accounts. Attach, mortgage or in any way encumber any benefits pertaining to the enterprises; buy, exchange, sell or in any other form operate in or with shares, bonuses, or other valuables, rent vaults, depositing in same and withdrawing its contents liberally; contract conditions of employment with the laborers and employees of these enterprises; also, subscribe collective contracts of work in their name, pay the stipulated wages of employees and laborers; represent the enterprises legally in courts and out of courts and say other facility necessary for the development of its function.

"FOURTH:—Order the designated Interventors to take inventory and appraisal of the goods and furniture pertaining to the intervened enterprises.

"FIFTH:—Notify all parties in the proper legal procedure."

One Armando Lebato Alvarez was named as the interventor of Tabacalera and he physically took possession of the premises, books and records of Tabacalera Severiano Jorge in Havana, Cuba, including tobacco in the warehouse, which, according to Jorge's undisputed affidavit, had a value in excess of $1,000,000.00. Jorge,

the individual, learned of this fact on September 15th in a telephone conversation in which he was reporting to his company in Havana that he had made certain sales on behalf of the company. Thereupon, on September 16th, he wrote to Standard Cigar Company a letter demanding payment on account of Tabacalera Severiano Jorge, S.A., in his care.[2]

Enclosed in the letter was a copy of a duly executed power of attorney incorporating the relevant by-laws of Tabacalera Severiano Jorge, and the certificate of the action by the stockholders and the certificate of the appropriate officers showing that it had been recorded with the public instruments of the notary who supervised the signing of the document. The terms of this power of attorney, so far as here relevant, are quoted above.

A few days later, on October 5th, Standard Cigar Company received a letter from the interventor, in which he stated that the Cuban revolutionary government was interested in maintaining its tobacco business with the United States, and then stated:

> "Consequently, this intervention will receive with great pleasure your new orders to the firm of Tabacalera Severiano Jorge, S.A., Havana, Cuba; at the same time, we wish to advise you that your debt balance with this firm is $100,894.28, which

[2] This letter is as follows:

"Regarding the balance due to Tabacalera Severiano Jorge, S.A. for the last several shipments, it is requested that payment be made to me as agent for the company at Miami, Florida. I hold an unconditional and unqualified power of attorney authorizing me to collect moneys due to the company. I am enclosing herewith a copy. The power of attorney is still in full force and effect, and I have been informed by counsel that I am authorized under the power of attorney to collect moneys due to the company for balances owed to it.

"I would appreciate it if you would send the balance of our account to Tabacalera Severiano Jorge, S.A. to my care.

"Very truly yours,
SEVERIANO JORGE."

should be settled in due time by means of remittances directly to same, no person or entity whatsoever being authorized to effect collections in its name in your country."

The Standard Cigar Company having failed to make payment of the amount owing for the tobacco, demand was made on behalf of Tabacalera, acting through Jorge, by counsel, on October 12, 1960. This demand was based again on the "unconditional and unqualified power of attorney authorizing [Jorge] to collect moneys due to the company." No reply having been received to this demand, Tabacalera Severiano Jorge, S.A., the corporation, filed suit for the amount due on October 26, 1960. This suit was met with a motion to dismiss on the ground of *forum non conveniens*. Before acting on this motion, the district court directed that the defendant file its answer. Thereafter, and before the answer was filed, Jose Romano, vice president of the corporation, *and one of the joint holders of the power of attorney* above referred to, executed an assignment in the following terms:

"ASSIGNMENT

"KNOW ALL MEN, that TABACALERA SEVERIANO JORGE, S.A., a Cuban corporation, in consideration of the sum of Ten Dollars ($10.00) to it in hand paid by SEVERIANO JORGE, S.A., a Cuban corporation, in consideration of the sum of Ten Dollars ($10.00) to it in hand paid by SEVERIANO JORGE, has sold, transferred and assigned and by these presents does sell, transfer and assign to the said SEVERIANO JORGE all of the said corporation's right, title, interest, claim and demand in and to certain accounts receivable and all sums due thereunder owing by the Antonio Company, a Florida corporation and Standard Cigar Co., a Florida corporation, and does hereby vest in the said Severiano Jorge full power and authority to sue for, collect and demand the payment of said sums.

"IN WITNESS WHEREOF, the said TABACALERA SEVERIANO JORGE, S.A. has caused these presents to be executed by its duly authorized officer this 1st day of April, 1961."

Thereafter, defendant filed its answer as required by the court, and as a "fourth defense" alleged affirmatively:

"On or about the 1st day of April, 1961, the plaintiff corporation assigned to Severiano Jorge, in writing, any right of action plaintiff had against the defendant, Standard Cigar Company. A true copy of said assignment, marked Exhibit I is hereto attached, and is made a part hereof by special reference as if set forth herein in haec verba."

It is of especial significance to note that in none of the subsequent pleadings has the defendant amended or modified its allegation that the plaintiff had "assigned to Severiano Jorge, in writing, any right of action plaintiff had against the defendant, Standard Cigar Company." In a subsequent defensive pleading, Standard contended that the assignment "or purported assignment" was invalid because not within the power of the corporation to execute.

The trial court then sustained the motion to dismiss for *forum non conveniens*. This judgment was reversed by this court. Standard filed its petition for certiorari to the United States Supreme Court, which then vacated our judgment in the following language:

"The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of Banco Nationale de Cuba v. Sabbatino, 376 U.S. 398, 11 L.Ed. 2d 804, 84 S.Ct. 923."

Standard Cigar Co. v. Tabacalera Severiano Jorge, 376 U.S. 780.

Upon receiving the Supreme Court mandate, we entered the following opinion:

> "For the reasons given in per curiam opinion filed this date in Menendez Rodriquez v. Pan American Life Insurance Company, et al, 5 Cir., 340 F. 2d 707 . . . this case is hereby remanded to the district court to afford the parties opportunity to be heard upon development of such record as is found necessary by the district court for its determination of the applicability of the Act of State Doctrine to this complaint."

The need for remanding the case to the district court arose because of the Supreme Court's direction to us that the case have further consideration in light of its decision in *Banco Nationale de Cuba v. Sabbatino,* 376 U.S. 398.

It goes without saying that if the state of facts in the case before us is parallel to that in *Sabbatino,* then it would be necessary for the district court to dismiss the suit in the trial court because, otherwise, the courts would be doing violence to what is known as the "Act of State Doctrine."

Since the appellee's defense here, based solely upon its contention that the government of Cuba has, by laws suitable to its needs, acquired every right and interest which Tabacalera owned in this account receivable, is dependent upon the act of State Doctrine, we must at the outset consider what is meant by this legal principle.

The Supreme Court said in *Banco Nationale de Cuba v, Sabbatino:*

> "The classic American statement of the Act of State Doctrine, which appears to have taken root in England as early as 1674, Blad v. Bamfield, 3 Swans. 604, 36 English Reports 992, and began to

emerge in the jurisprudence of this country in the late 18th and early 19th century . . . is found in Underhill v. Hernandez, 168 U.S. 250, where Chief Justice Fuller said for a unanimous court (page 252):

'Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of a government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.' "

The Court then said:

"None of this Court's subsequent cases in which the Act of State Doctrine was directly or peripherally involved manifest any retreat from Underhill. See American Banana Co. v. United Fruit Co., 213 U.S. 347; Oetjen v. Central Leather Company, 246 U.S. 297; Ricaud v. American Metal Co., 246 U.S. 304; Shapleigh v. Mier, 299 U.S. 468; United States v. Belmont, 301 U.S. 324; United States v. Pink, 315 U.S. 203. On the contrary in two of these cases, Oetjen and Ricaud, the doctrine as announced in Underhill was reaffirmed in unequivocal terms." 376 U.S. 398, 416.

In the reconsideration we are required to make of the present case by the Supreme Court's mandate, we look first to see to what extent the facts are similar. Two points of dissimilarity are immediately apparent. The first need not be fully developed because it may really be a distinction without a difference if all of the facts were fully known, and because appellants need not rely upon this circumstance as a basis for the relief they seek here. This difference is that in the *Sabbatino* case the act of the Cuban government was a direct and

open confiscation of the property of the Cuban-based sugar corporation, whereas in the instant case, the act of the Cuban government amounted only to "in intervention" for the period of one year.[3]

The really important point of difference between the facts of this case and that of *Sabbatino* is that the subject of the confiscation in the latter case was a ship's cargo of sugar which was present in the territorial waters of Cuba—tangible personal property—whereas in the case before us the subject of the alleged "taking" by the government of Cuba is a credit owed to the Cuban corporation, (albeit arising out of a Cuban transaction) by an American creditor domiciled in Tampa, Florida.

To begin with, it goes without saying that if the effort by Severiano Jorge to obtain as assignee of Tabacalera money which was admittedly due and owing to the corporation depended upon either his physical self-help within the territory of Cuba or upon his showing that the courts of Cuba would hold in his favor, there would be no practical basis for his claim here, because it is clear that the Cuban government would physically prevent the former and would "judicially" foreclose any rights as to the latter. Such conduct by the Cuban government, while offensive to countries like the United States, operating under constitutional limitations of governmental power, would be beyond the power of this country to control because it would be conduct within Cuba. Thus, it would fall clearly within the Act of State Doctrine, for any effort to attack such conduct of the Cuban government would be in violation of the

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[3] It is argued in the *brief* of the appellee that somehow after the end of the year the Cuban government acquired some additional absolute power or rights as to the assets of Tabacalera, amounting in effect to confiscation. The record is void of any proof of what actually was the status of affairs, although we may feel fairly certain that the Cuban government has not affirmatively relinquished whatever rights it had to supplant the original directors and stockholders and officers of this corporation.

principle that the courts of the United States "will not sit in judgment on the acts of the government of another *done within its own territory.*" (Emphasis added.) See *Underhill v. Fernandez, supra.*

The question then, naturally, arises whether the Act of State Doctrine prevents United States Courts from deciding a case as to which it has personal jurisdiction of the parties and the *res* merely because the government of a foreign state would, if it had the parties before it, as well as the *res,* decide it differently.

Thus, we come straight to the question whether the Act of State Doctrine requires that our courts reject a claim, otherwise cognizable by them, purely on the assumption that if all the parties and the thing in issue were present in Cuba the Cuban government would act in a manner most destructive of private property and most beneficial to itself as distinguished from its citizens.

We conclude that the Act of State Doctrine does not require such holding.

Here, even assuming that the Cuban government would, had it thought it necessary to do so, have expressly given to Senor Alvarez, its interventor, specific authority to sue to collect outstanding accounts, *which it did not,* and that it would, if it had thought it necessary to do so, have expressly given to him the powers of attorney, *which it did not,* the significant power to cancel, terminate or rescind all outstanding powers of attorney, 'which it did not, the significant fact is that the interventor did neither of these things. The only proof of the Cuban law that was before the trial court was in the deposition testimony of three Cuban lawyers, by whom it was made clear that the broad power of attorney executed by the corporation in favor of Jorge and Romano could be revoked only by a similar docu-

ment filed in the same registry in which the power of attorney had been filed. Exen though we were to assume, contrary to the available evidence, that the power of attorney could be revoked in Cuba by a less formal act, there is an utter lack of proof that the interventor attempted to withdraw or revoke the power of attorney, probably since he knew nothing about it. The burden of proving such a revocation was, as a matter of defense, on the defendant below.

Thus, it is, that on the record before us, it stands undisputed that Jorge and Romano, as of the time they made demand on Standard Cigar Company had an outstanding, unconditional power of attorney which authorized them expressly to make the collection which they sought to make. This, of course, had been given to them long before the interventor was appointed. Then, it also follows that even after the interventor was appointed and went into possession of whatever was available to him to reach in Cuba, he had no authority to, and did not attempt, even then, to revoke the outstanding power of attorney. Thus it is, that on April 1, 1961, Romano had full power to execute the assignment of the corporation's claim to Jorge.[4]

We conclude, therefore, that an analysis of the acts of the Cuban government, giving absolutely complete and full effect to them, requires us to hold that through inadvertence, mistake or purposeful handling of this account, the Cuban government did not actually by any

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[4] While Standard makes some effort to inquire as to what consideration flowed to the corporation in return for the assignment executed to Jorge, this is utterly irrelevant so far as Standard is concerned, for Standard has no concern about the management of the creditor corporation with which it is dealing. However, in order to make it appear that all the equities favored the granting of such assignment, even beyond the fact that all equitable ownership in the stock belonged to Jorge, the evidence is undisputed that Jorge himself had concurrently advanced to the corporation six times as much as he was suing for in expectation of being able to obtain a partial reimbursement by the collection of this claim.

of its official acts, interfere with the right of Tabacalera Severiano Jorge, S.A. to collect this account in the manner in which the company sought to pursue the remedy in the United States courts in Tampa. This would be true even if the credit here be deemed to have a "situs" in Cuba, or even if it be deemed to be in all material aspects the same as tangible property. *Cf. Banco Nationale de Cuba v. Sabbatino, supra.* This is true because the government and the interventor *on this record* failed to take the steps which might otherwise have divested Tabacalera and Jorge and Romano of the power to assign this claim. We see no reason to create a further power of confiscation in the interventor than the government gave him.

Here, simply stated, there was no confiscation of the kind exercised by Cuba as to the sugar in *Sabbatino.* There was in effect a limited temporary receivership which did not attempt to cancel an outstanding power of attorney.

Moreover, we conclude that in light of the fact that the government of Cuba did not have physical control over the species of property represented by this claim against Standard Cigar Company, it would not be a violation of the Act of State Doctrine for the courts to hold that, had the Cuban government taken all of the steps that its unlimited power would have permitted it to take, such conduct by the Cuban government would not be recognized by the United States courts. Nothing in the *Sabbatino* case requires that the doctrine be extended thus far. It should be noted that in the *Sabbatino* case the *res* that was subject to confiscation by the Cuban government was physical property present in Cuba; whereas the *res* here is a credit owed by an American company in Tampa, Florida. Much is said by the appellees in this case undertaking to show that the situs of the debt owed by Standard Cigar to Tabacalera was in Havana, Cuba. The situs of intangible property is about as intangible a concept as is known to the law.

The situs may be in one place for ad valorem tax purposes, *Farmers Loan and Trust Co. v. State of Minnesota,* 280 U.S. 204; it may be in another place for venue purposes, i.e., garnishment, *Chicago R.I. & P.R. Co. v. Sturm,* 174 U.S. 710; it may be in more than one place for tax purposes in certain circumstances, *Curry v. McCanless,* 307 U.S. 357; it may be in still a different place when the need for establishing its true situs is to determine whether an over-riding national concern, like the application of the Act of State Doctrine is involved.

The Supreme Court had determined in the *Sabbatino* case that in deciding the situs of a debt such as the one before us, as an ingredient in determining whether the governmental acts of Cuba withdraw it from the jurisdiction of American courts is a matter of federal law and not of state law. The Court said:

> "However, we are constrained to make it clear that *an issue* concerned with a basic choice regarding the competence and function of the Judiciary and the National Executive in ordering our relationships with other members of the international community must be treated exclusively as an aspect of federal law." (Emphasis supplied.) 376 U.S. 398, 425.

Here, resolution of the issue of situs of the debt determines whether the Act of State Doctrine applies.

Therefore we must fashion a rule of federal law to determine whether in dealing with this particular species of intangible property the overriding concern of international relations of the United States and Cuba requires that we give effect to the confiscatory policies of the Cuban government to funds which are fully within the physical control of the American courts, and clearly without the physical control of the courts of the government of Cuba.

In doing so, we recognize that no such rule can be fashioned that will violate the principles enunciated by the Supreme Court in *Sabbatino*. We find that principle expressed in the following language:

> "It is also evident that some aspects of international law touch more sharply on national nerves than do others; the less important the implications of an issue are for our foreign relations, the weaker the justification for exclusivity in the political branches . . . Therefore, rather than laying down or reaffirming an inflexible and all encompassing rule in this case, we decide only that the judicial branch will not examine the validity of a taking of property *within its own territory* by a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or unambiguous agreement regarding controlling legal principles, even if a complaint alleges that the taking violates customary international law." 276 U.S. 398, at 428.

The underlying thought expressed in all of the cases touching on the Act of State Doctrine is a common-sense one. It is that when a foreign government performs an act of state which is an accomplished fact, that is when it has the parties and the *res* before it and acts in such a manner as to change the relationship between the parties touching the *res*, it would be an affront to such foreign government for courts of the United States to hold that such act was a nullity. Furthermore, it is plain that the decisions took into consideration the realization that in most situations there was nothing the United States courts could do about it in any event.

In the case before us, it cannot be doubted that whatever may be the ordinary concept of the situs of a debt, the government of Cuba was not physically in a position to perform a *fait accompli* in the nature of

the acquisition by the Cuban government or its interventor of the money owed to Tabacalera by Standard Cigar Company. It was simply not within the power of Cuba to accomplish this result. To this extent, we think it clear that whatever efforts were made by the Cuban government dealing with Tabacalera, these acts are to be recognized under the Act of State Doctrine only insofar as they were able to come to complete fruition within the dominion of the Cuban government. As to other matters we conclude that they were not a "taking of property *within its own territory*" within the language used by the Supreme Court in *Sabbatino*.

The Supreme Court has fully recognized in its decisions over the years that the situs of intangible personal property is a shifting concept. The Court, in *Curry v. McCanless, supra,* fully discusses the varying concepts of situs of intangible personal property for tax purposes. 307 U.S. 357, at page 368.

Here, we do not have a case in which affected third parties are litigating over the accomplished fact of "takeover" of an asset in Cuba. We are dealing rather with a change in the form of the asset from an account receivable into cash, which can be accomplished only in the courts of the United States. In attempting to fashion a rule fixing the situs of an indebtedness for the very limited purpose of deciding whether it is "property *within* [*Cuba's*] *own territory,*" we find no compelling requirement that we accept the fiction that the situs is irrevocably at the domicile of the creditor, a fiction sometimes used for other commercial purposes. For the purpose of our inquiry we find this debt was not property in Cuba.

We conclude, therefore, that it was error for the trial court to dismiss the complaint by summary judgment. On the record before the trial court the appellants were entitled to have their motion for summary judgment granted. Such failure by the trial court is not, of

course, appealable as such, because an order *denying* a motion for summary judgment is an interlocutory order in the case and not a final order. However, it appears that there is no material issue of any relevant fact under the law of the case as we conceive it to be. Both parties have had more than ample time to develop pleadings and fact issues and it now seems appropriate to direct that judgment be entered for the appellant Jorge as assignee of Tabacalera Severiano Jorge, S.A., a status which the defendant, by its pleadings, concedes he holds if the Act of State Doctrine does not control the case.

The judgment is REVERSED and the case is REMANDED to the district court with directions that judgment be entered in favor of Severiano Jorge.

APPENDIX C

OPINION IN RELATED CASE

TABACALERA SEVERIANO JORGE, S. A., and Severiano Jorge,

Appellants,

v.

STANDARD CIGAR COMPANY,

Appellee.

No. 24784

United States Court of Appeals

Fifth Circuit

March 18, 1968.

The United States District Court for the Middle District of Florida, Joseph P. Lieb, Chief Judge, entered summary judgment for the defendant, and the plaintiffs appealed. The Court of Appeals, Tuttle, Circuit Judge, held that appeal would be dismissed by Court of Appeals on ground of mootness, where Court of Appeals had determined in companion case that plaintiff, who was sole stockholder of plaintiff corporation, was entitled to summary judgment.

Appeal dismissed for mootness.

Appeal and Error 790(3)

Appeal by plaintiffs from judgment of Federal District Court to Court of Appeals would be dismissed by Court of Appeals on ground of mootness, where Court of Appeals had determined in companion case that plaintiff, who was sole stockholder of plaintiff corporation, was entitled to summary judgment.

Phil Newcomm, Shutts & Bowen, Miami, Fla., for appellants.

William A. Gillen, Fowler, White, Collins, Gillen, Humkey & Trenam, Tampa, Fla., for appellee.

Before TUTTLE and WISDOM, Circuit Judges, and HEEBE, District Judge.

TUTTLE, Circuit Judge:

This is a companion case to Tabacalera Severiano Jorge, S. A. v. Standard Cigar Company, 392 F.2d 706, which has been decided this day.

Following the summary judgment rendered by the district court for the defendant, Standard Cigar Company, in the other case, and the appeal taken therefrom to this court, the individual plaintiff, Severiano Jorge, filed his petition for relief from final judgment in the District Court for the Middle District of Florida, on February 14, 1967. In his petition he alleged that since the taking of the aforesaid appeal, certain events had transpired which formed the basis, under Rule 60(b), Federal Rules of Civil Procedure, for setting aside the judgment. These events, he alleged, were that on January 27, 1967, Jorge had been naturalized as an American citizen by an order of the United States District Court in and for the Southern District of Florida. It was alleged that in the prior decision in the case on appeal, the trial court had held in effect that since Severiano Jorge was a Cuban national, Title 22 U.S.C.A. § 2370(e)(2), the so-called Hickenlooper amendment, was not applicable and relief could not be afforded him on that basis.

By this petition, the individual appellant Jorge contends that Rule 60(b) permits the setting aside of the judgment by reason of this change in his citizenship.

By reason of the decision and judgment of this court in the companion case, this appeal becomes moot. Under the decision of this court Jorge is granted the relief which he sought in the trial court in the main action, without reference to his American citizenship. Thus, of course, any petition seeking the setting aside of that judgment is now unnecessary since this court has now set it aside as erroneous.

This appeal is dismissed for mootness.

APPENDIX D

Cuban Decree No. 1384, of April 9, 1951

"WHEREAS, Law No. 13, of December 23, 1948 provided that the currency of the United States of America shall cease to be legal tender and to have debt redeeming force in the territory of the Nation one year after the date on which the 'Banco Nacional de Cuba' (National Bank of Cuba) commenced operating, unless the Chief Executive, on the recommendation of said Bank, should extend that period for another period not exceeding one year. And,

WHEREAS, the above mentioned authority to extend for one year the status of legal tender and debt redeeming force of the United States currency in the national territory ought to be construed to cover the possibility of extending said period for a shorter additional period, and to provide for its expiration in such a way that the effects of one and the other provision will not extend beyond said additional one year period. And,

WHEREAS, the 'Banco Nacional de Cuba' commenced operating on the 27th day of April, 1950, and then, within the first one year period allowed by said Law No. 13, of December 23, 1948, the Board of Directors thereof requested this Chief Executive to extend the status of legal tender and debt redeeming force of the United States currency in the national territory until June 30, 1951. And,

WHEREAS, the Board of Directors of said 'Banco Nacional de Cuba' has further recommended to this Chief Executive the adoption of certain supplementary regulations in connection with the cessation of said legal tender status and debt redeeming force on June 30, 1951.

NOW, THEREFORE: In pursuance of the powers vested in me by the Constitution and other statutes of the Republic, on the recommendation of the 'Banco Nacional de Cuba', as endorsed by the Minister of the Treasury, and with the approval of the Council of Ministers, I hereby,

RESOLVE:

First: To extend the status of legal tender and debt redeeming force of the currency of the United States of America in the territory of the Nation until the thirtieth day of June of the current year. Second: Beginning on the date on which the United States currency shall cease to be legal tender and have debt redeeming force in the territory of the Nation, all obligations contracted or payable in the national territory shall be expressed and settled in national currency pursuant to the provisions of Law No. 13, of December 23, 1948, subject to no exception other than those specified in Articles 96, 98 and 113 thereof. The debtors of obligations not included in said exceptions and the payment whereof in United States currency has been stipulated or agreed upon prior to the cessation of such legal tender status and such debt redeeming force, may settle such obligations at par through delivery of national currency in the same amounts as those previously expressed in United States dollars.

Third: Upon the cessation of the status of legal tender and debt redeeming force of the United States currency, all bank deposits theretofore kept under such denomination shall be subject to the provision contained in Article 98 of Law No. 13, of December 23, 1948, which shall be applied in accordance with the following rules:

(a) Banks may continue accepting and keeping deposits in United States currency and in any other

foreign currency, but adhering to the provisions of this Decree and of Article 113 of Law No. 13 of December 23, 1948.

(b) All withdrawals of funds shall be made by means of non-transferable and non-negotiable documents drawn in accordance with the following form:

Non-transferable _____ Non-negotiable
(Name of the Bank)

Account No. _____
(Place and date)

Please pay to myself the sum of _____
_____/100 Dollars and charge same to my account in United States Currency.

$_____ _____
(Signature of Depositor)

(c) If the Bank should choose, pursuant to the above-mentioned Article 98 of Law No. 13, of December 23, 1948, to pay in United States banknotes the withdrawals from bank deposits kept under the denominations of United States currency, such payments shall be made without deducting any expenses, commissions or premiums at the expense of the depositor, who shall be entitled to the free disposition and possession of said currency; and,

(d) If the bank should choose to pay either in dollar drafts on New York or in national currency at the then current exchange rate, the election between one and the other form of payment under said Article 98 of Law No. 13 of December 23, 1948 shall be a privilege of the depositor, who by requesting the payment in a dollar draft shall be deemed to assume the customary transfer expenses and taxes.

Fourth: The 'Banco Nacional de Cuba' is hereby directed to attend to the enforcement of this Decree, and to adopt whatever additional regulations may prove necessary.

Done at the Presidential Palace in Havana this 9th day of April, the year 1951.

CARLOS PRIO SCARRAS
President

Felix Lancis
Prime Minister
Jose R. Alvarez
Minister of the Treasury
(Official Gazette #92, of April 20, 1951)"

APPENDIX E

Cuban Law No. 568, of September 29, 1959

"Article 1.—For the purposes of this law, the following are considered felonies of monetary, contraband. . . . (6) To export currency or securities, or to transfer funds to points abroad by means of checks, transfers, drafts, letter-orders, orders of payment, compensations, travellers' checks, letters of credit, reimbursements of collections, purchases or sales of passage tickets or through any other similar means, regardless of the origin or source of the funds, except for those cases authorized by the Currency Stabilization Fund, through a member bank or a firm duly authorized by Banco Nacional de Cuba.

. . . . . (10) To receive and credit to bank accounts kept abroad, or to transfer to third parties collections made abroad for business transactions or services rendered in Cuba, regardless of the source or origin of the respective funds.

Article 2.—The persons guilty of the felony of curreney contraband referred to in the preceding article shall be liable to a penalty of imprisonment for from 6 months and 1 day to 3 years, or a fine of one to two thousand quotas, or both.

Article 3. a) Any person who sells or in any way assigns, transfers, or transmits currency, checks, drafts, orders of payment, travellers' checks or any similar paper in foreign currency shall be liable to imprisonment for from 6 months and 1 day to 3 years, or to a fine of one to two thousand quotas, or both.

Article 6.—. . . . . The Currency Stabilization Fund is expressly authorized to order the intervention of any company, business or entity which is presumed to have infringed the provisions of this law."

APPENDIX F

Cuban Law No. 647, of November 24, 1959

TRABAJO.

OSVALDO DORTICOS TORRADO, Presidente de le Republica de Cuba,

HAGO SABER: Que el Consejo de Ministros ha acordado y yo he sancionado, lo siguiente:

POR CUANTO: Es obligacion del Gobierno y funcion propia del mismo regular las relaciones economicas entre los distintos factores de la produccion, evitando cualquier actividad que en forma directa o indirecta pueda alterar el equilibrio economico del Pais.

POR CUANTO: Es proposito del Gobierno Revolucionario garantizar, el normal funcionamiento de los centros de trabajo como medio de asegurar la produccion, necesario a la ciudadaria las fuentes de trabajo y el auge y desarrollo de la economia del Pais.

POR CUANTO: Por las anteriores consideraciones debe el Estado constribuir a la reorganizacion y administracion de la empresas que no laboran con la normalidad requerida a los efectos de lograr un mejor desenvolvimiento de las mismas, el mantenimiento de la produccion y la estabilidad y posible desarrollo del centro de trabajo.

POR CUANTO: Es funcion del Gobierno movilizar los recursos necesarios para aplicarlos en la solucion de las crisis economicas de aquellas empresaso negocios que asi lo requieran siempre que tal proteccion revierta en beneficio de la produccion y de los propios trabajadores,

POR CUANTO: Cuando el Estado realiza la aplicacion de sus fondos en beneficio de empresas privadas, debe tener una adecuada compensacion mediante el resarcimiento del capital invertido y de su interes o la

participacion en las utilidades de esas empresas en parte proporcional a la aportacion en relacion con el Capital que en total constituya el patrimonio de la misma.

POR TANTO: En uso de las facultades que le estan conferidas al Consejo de Ministros este ha acordado y yo he sancionado la siguientes:

LEY NO 647

ARTICULO PRIMERO: Se autoriza al Ministro del Trabajo para que en los casos que estime necesario disponga la intervencion de aquellas empresas o centros de trabajo en los que en forma ostensible se altere el normal desarrollo de la produccion.

ARTICULO SEGUNDO: El Ministro del Trabajo ejecitara la autorizacion a que se refiere el Articulo primero en los siguientes casos.

a) Lock-out o cierre temporal o definitivo que traiga aparejada la paralizacion del centro de trabajo.

b) Braves conflictos laborales.

c) Despidos en masa.

d) Incumplimiento de las resoluciones de los Tribunales de Justicia y los laudos o resoluciones del Ministro de Trabajo producidos con ocasion de un conflicto laboral.

ARTICULO TERCERO: El Ministro del Trabajo al disponer la intervencion de una empresa o centro de trabajo lo hara mediante resolucion fundada, en la que conste claramente el motivo que la provoca, la duracion de la misma, el nombre del interventor designado y las facultades de que queda investido.

En la propia resolucion se senalara el sueldo que deba percibir el interventor mensualmente y durante el tiempo que ejerza sus funciones.

ARTICULO CUARTO: Las intervenciones dispuestas por el Ministro del Trabajo en virtud de lo dispuesto en la presente Ley no podran tener una duracion mayor de seis meses. No obstante, cuando para el logro de los fines de la intervencion se requiriese prorrogar dicho terminos, sera necesaria le disposicion del Presidente de la Republica que se dictara a propuesta del Ministro del Trabajo y la cual no excedera de un termino de seis meses.

ARTICULO QUINTO: Los interventors designados en virtud de los dispuesto en esta Ley tendran las facultades necesarias para administrar y dirigir la empresa o centro de trabajo comprendidos en la misma y todas aquellas que le corresponden a sus ejecutivos, quedando subrogados en el lugar y grado del patrono sin perjuicio de que en la propia resolucion porque se decreta la intervencion y se nombre el interventor, se especifique el alcance de sus funciones y facultades.

ARTICULO SEXTO: Se Prohibe el cierre temporal o definitivo de toda empresa o centro de trabajo sin la previa autorizacion del Ministro del ramo, Las personas naturales o juridicas que como duenos o titulares por cualquier concepto de una empresa o centro de trabajo estima en conveniente a sus intereses el cierre de la misma, deberan solicitar autorizacion previa del Ministro del Trabajo, el cual en el termino de treinta dias siguientes a la presentacion de la solicitud, podra acceder a lo pedido o decretar la intervencion de la empresa o centro de trabajo en la forma y condiciones que se establecen en esta Ley.

Transcurridos los treinta dias a que se refiere el parrafo precedente la responsabilidad del patrono quedara a salvo en relacion a la obligacion que por este precepto se le impone y podra proceder conforme a lo que hubiere solicitado.

ARTICULO SEPTIMO: En todos los casos en que se inicie procedimiento judicial de quiebra o suspension de pago de cualquier empresa mercantil o fabril que

constituya un centro de trabajo, el Juez de inmediato, le comunicara al Minstro del Trabajo la promocion del asunto, suspendiendo toda actuacion por termino de quince dias.

El Ministro de Trabajo dentro del termino a que se refiere el parrafo precedente podra decretar la intervencion de la industria o comercio, notificandolo de inmediato al Juzgado que conozca del asunto en cuyo caso continuara paralizado el procedimiento hasta tanto no transcurra el termino por el que se hubiera decretadola intervencion o la prorroga en su caso.

Si transcurriere el termino de quince dias sin que se hubiese decretado intervencion alguno o antes, el Ministro del Trabajo hiciera saber al Juez su intencion de no intervenir el centro laboral, continuara el procedimiento por todos los tramites establecidos por la Ley.

ARTICULO OCTAVO: En los casos en que fuere necesario para el desarrollo de la industria cualquier clase de financiamento, el interventor lo solicitara asi del Ministro del Trabajo y esta lo proporcionara si lo estimare de beneficio por medio del Banco Nacional, el Banco de Fomento Agricola e Industrial de Cuba, el Banco de Desarrollo Economico y Social, o cualquier otra institucion Estatal o Paraestatal o privada.

En los casos en que fuera posible obtener los financiamientos requeridos de los organismos a que se refiere el parrafo anterior, o la premura del caso asi lo requiriere, el Consejo de Ministros a propuesta del Ministro del Trabajo podra conceder los creditos requeridos hasta donde fuere indispensable para mantener el normal funcionamiento de la empresa o negocio.

Cuando el Estado contribuya con fondos propios segun lo dispuesto en este articulo podra optar:

a) En participar de las utilidades de la empresa en la parte correspondiente al capital aportado en relacion a capital total de aquella en la que se incluira el aporte estatal.

b) Mantenerse como acreedor privilegiado, viniendo obligado la empresa o negocio que hubiere recibido la aportacion estatal a la devolucion de la misma con cargo a sus utilidades y devengando los saldos pendientes un interes del 6% anual.

En los casos en que el Estado optare por formar parte de la empresa, sera representado en el mismo por la persona que designe el Departamento de Industrializacion del Instituto Nacional de Reforma Agraria, cuya designacion se hara conforme a las facultades que le confiere la Ley de su Institucion.

ARTICULO NOVENO: Las intervenciones que en virtud de la presente Ley disponga el Ministro del Trabajo cesaran una vez que las mismas alcancen el objeto propuesto o sea superada la crisis que la motivo en ultimo termino por vencerse el termino por que fue decretada su prorroga.

Terminada la intervencion dispuesta al amparo de esta Ley, los interventores vienen obligados a rendir cuenta detallada de sus gestiones al Ministro del Trabajo dentro del termino de quince dias a partir del siguiente en que hubiesen cesado como tales interventores cuyo termino podra prorrogarse por quince dias mas en virtud de causa justificada.

ARTICULO DECIMO: Sin perjuicio de los dispuesto en la presente Ley, las personas que dispusieren el cierre temporal o definitivo de cualquier empresa o centro de trabajo sin cumplir lo dispuesto en el articulo sexto seran sancionados con una multa de treinta y una a ciento ochenta cuotas o privacion de libertad de treinta y uno a ciento ochenta dias, o ambas sanciones siendo del conocimiento del Juez Correccional de la demarcacion en que radique el centro de Trabajo. En igual sancion incurriran los interventores que no rindan las cuentas de sus gestiones dentro del termino concedido y su prorroga en su caso.

DISPOSICION TRANSITORIA

UNICA. Los procedimientos de quiebra o de suspension de pagos que estuvieren en tramitacion a la promulgacion de la presente Ley, se suspenderan de oficio por un termino de quinces dias en el estado en que se encuentren, comunicandosele al Ministro del Trabajo a los fines dispuesto en el articulo septimo, reandandose le sustanciacion si, dentro del termino senalado no se decretase la intervencion y diese conocimiento al Juez o Tribunal de que se trate.

DISPOSIONES FINALES

PRIMERA: El Ministro del Trabajo queda encargado del cumplimiento de lo dispuesto en la presente Ley.

SEGUNDA: Se derogan cuantas disposiciones legales y reglamentarias se opongan al cumplimiento de lo dispuesto en la presente Ley que comenzara a regir desde la fecha de su publicacion en la Gaceta Oficial de la Republica.

POR TANTO: Mando que se cumula y ejecute la presente Ley en todas sus partes.

DADA en al Palicio de la Presidencia en la Habana, a 24 de Noviembre de 1959 — Ano de la Liberacion.

OSVALDO DORTICOS TORRADO
PRESIDENTE

FIDEL CASTRO RUZ
PRIMER MINISTRO

AUGUSTO R. MARTINEZ SANCHEZ
MINISTRO DEL TRABAJO

APPENDIX G

(Translation from Spanish)

Cuban Law No. 647, of November 24, 1959

LABOR.

I, OSVALDO DORTICOS TORRADO, President of the Republic of Cuba,

PROCLAIM: That the Council of Ministers has agreed on and I have sanctioned, the following:

WHEREAS: It is the obligation and the proper function of the Government to regulate the economic relations among the various factors of production, preventing any activity that could directly or indirectly affect the economic equilibrium of the country.

WHEREAS: It is the purpose of the Revolutionary Government to assure the normal functioning of the centers of labor as a means of assuring the production that is needed by the citizenry /in/ sources of labor and the increase and development of the country's economy.

WHEREAS: For the reasons stated above the State should contribute towards reorganizing and managing enterprises not operating with the normality needed to achieve better development thereof, maintaining production, and stabilizing and possibly developing the center of labor.

WHEREAS: It behooves the Government to muster the necessary resources in order to apply them to the solution of the economic crises of these firms or businesses that so require, always provided that such protection redounds to the advantage of production and the workers themselves.

WHEREAS: When the State applies its funds for the benefit of private enterprises, it should have adequate compensation in the form of the return of the

capital invested and of the interest thereon, or a share in the profits of those firms in a portion that is in proportion to the total capital constituting the property of the enterprise.

THEREFORE: By virtue of the powers granted the Council of Ministers it has agreed and I have sanctioned the following:

LAW NO. 647

ARTICLE ONE: The Minister of Labor is empowered to order intervention, in those cases where he deems it necessary, of those enterprises or centers of labor in which normal development of production is obviously being disturbed.

ARTICLE TWO: The Minister of Labor shall exercise the powers referred to in the first Article in the following cases.

a) Lockout or temporary or final closing, entailing stoppage of the center of labor.

b) Serious labor conflicts.

c) Mass dismissals.

d) Failure to comply with the decisions of the courts of Justice and the recommendations or decisions of the Minister of Labor issued in connection with a labor conflict.

ARTICLE THREE: When the Minister of Labor orders intervention of an enterprise or center of labor, he shall do so by means of a decision for cause, clearly stating the reason calling for it, its duration, the name of the interventor designated and the powers vested in him.

The decision proper shall indicate the salary the interventor shall receive monthly throughout the time he is in office.

ARTICLE FOUR: Interventions ordered by the Minister of Labor in virtue of the provisions of the present Law may not have a duration of over six months. However, when it is necessary to extend the said term in order to attain the purposes of the intervention, an order by the President of the Republic shall be required, which he shall issue at the request of the Minister of Labor and which shall not exceed the term of six months.

ARTICLE FIVE: Interventors designated pursuant to the provisions of this law shall have the powers needed to administer and direct the enterprise or center of labor covered thereby and all the powers appertaining to its executives, for whom and in whose place and stead he is substituted, provided that the resolution itself that orders the intervention and names the interventor may specify the scope of his functions and powers.

ARTICLE SIX: Temporary or definitive closing of any firm or center of work is prohibited without prior authorization by the Minister of the branch of industry. Natural or juridical persons who, as owners or proprietors of a firm or center of labor in any way, shall deem closing the same in conformity with their interests, must apply for a prior authorization from the Minister of Labor, who may, within the term of thirty days following the filing of the application, grant the request or decree intervention of the firm or center of labor, in the form and under the conditions laid down in this law.

At the end of the thirty days referred to in the preceding paragraph, the responsibility of the owner with respect to the obligation imposed on him in this connection shall cease, and he may proceed in accordance with the tenor of his application.

ARTICLE SEVEN: In all cases in which a judicial proceeding is being brought for bankruptcy or suspension of payments by any commercial or manufacturing

enterprise which is a center of labor, the Judge shall immediately notify the Minister of the action, and postpone any steps for a term of fifteen days.

Within the aforesaid term, the Minister of Labor may order intervention of the industry or business, giving notice at once to the court taking cognizance of the matter, in which case the proceedings shall continue inactive until the end of the term for which intervention, or the extension thereof, has been ordered in the case.

If the term of fifteen days shall have elapsed without any intervention having been ordered, or if before then the Minister of Labor shall have informed the Judge of his intention not to intervene in the center of labor, the proceedings shall go ahead in all the steps prescribed by law.

ARTICLE EIGHT: In cases where any kind of financing is required for the development of the industry, the interventor shall apply for the same from the Minister of Labor, who shall grant it to him if he deems it advantageous, through the National Bank, the Agricultural and Industrial Development Bank of Cuba, the Economic and Social Development Bank, or any other government, quasi-governmental or private institution.

In cases where it has not been possible to obtain the necessary financing from the agencies referred to in the preceding paragraph, or the urgency of the situation makes it necessary, the Council of Ministers may, on the motion of the Minister of Labor, grant the credits required to the extent indispensable for maintaining normal operation of the enterprise or business.

When the State contributes its own funds, pursuant to this article, it will have the option:

a) Of sharing in the profits of the enterprise in the proportion borne by the contributed capital to the total capital of the enterprise, in which the government contribution shall be included.

b) Of keeping the position of privileged creditor, the enterprise or business that has received the government contribution being under the obligation of repaying the same out of its earnings and the pending balances paying interest at 6% per annum.

In cases where the State shall elect to become a part of the enterprise, it shall be represented therein by a person to be designated by the Industrialization Department of the National Institute of Agrarian Reform, which nomination shall be made pursuant to the powers granted it by its charter.

ARTICLE NINE: Interventions ordered by the Minister of Labor in virtue of the present law shall end as soon as they achieve the goals set up, or the crisis is overcome that gave rise to them originally, or finally at expiry of the term for which their extension was set.

At the end of an intervention under this Law, the interventors are required to give a detailed account of their administration to the Minister of Labor within a term of fifteen days from the day after they have ceased to be interventors, which term may be extended for a further fifteen days, for cause.

ARTICLE TEN: Without prejudice to the provisions of the present Law, persons who order the temporary or definitive closing of any enterprise or business without complying with the provisions of Article Six shall be liable to a fine of thirty-one to one hundred eighty quotas, or imprisonment for thirty-one to one hundred eighty days, or both, under the jurisdiction of the Correctional Judge of the district in which the center of labor is located. Interventors who fail to submit an account of their administration within the term indicated, or the extension thereof, shall be liable to the same penalty.

TRANSITIONAL CLAUSE

ONE AND ONLY: Proceedings in bankruptcy or for suspension of payments that are under way at the promulgation of the present Law shall be automatically suspended for a period of fifteen days, at the point they shall have reached, the Minister of Labor being informed for the purposes stated in Article Seven, proceeding being continued if, within the term indicated, intervention has not been ordered and notice thereof given to the Judge or Court in question.

EXECUTORY CLAUSES

FIRST: The Minister of Labor is entrusted with enforcement of the provisions of the present Law.

SECOND: Any provisons of the law or regulations contrary to the provisions of the present law are hereby repealed, and the law shall be in effect from the date of its publication in the official Gazette of the Republic.

WHEREFORE: I order that the present Law be complied with and enforced in all its parts.

GIVEN in the Presidential Palace in Havana, on November 24, 1959—Year of Liberation.

OSVALDO DORTICOS TORRADO
PRESIDENT

FIDEL CASTRO RUZ
PRIME MINISTER

AUGUSTO R. MARTINEZ SANCHEZ
MINISTER OF LABOR

APPENDIX H

Cuban Law No. 843, of July 6, 1960

GACETA OFICIAL, LA HABANA,

CURSADO 6 DE JULIO DE 1960.

Ley No. 843

Modificacion de la Ley de INTERVENCION (647) de 24 de Noviembre de 1959.

OSVALDO DORTICOS TORRADO, Presidente de la Republica de Cuba.

Hago saber: Que el Consejo de Ministros ha acordado y yo ha sancionado lo Siguiente:

Por cuanto: La Ley numero 647 de 24 de Noviembre de 1959, publicada en la GACETA OFICIAL del dia 25 del propio mes, faculta al Ministro del Trabajo para que mediante el procedimiento en ella establecido y en los casos previstos en su Articulo II, proceda a la intervencion de las Empresas o Centros de Trabajo en los que en forma ostensible se altere el normal desarrollo de la produccion.

Por cuanto: Se ha observado que contra diversas empresas o centros de trabajo intervenidos, pesan distintos procedimientos judiciales, a virtud de obligaciones contraidas por las mismas con anterioridad a las Resoluciones de Intervencion; procedimientes en los que de ejecutarse las sentencias dictadas en ellos, podran hacer ineficaces las intervenciones y tracer como consecuencia el cierre de centros de trabajo.

Por cuanto: El Articulo 222 de la Ley Fundamental de la Republica establece como deber del Estado el orientar la economia nacional en beneficio del pueblo, por lo que en cumplimiento de dicho precepto, resulta procedente dictar cuantas medidas sean necesarias, tales como

la de propender al cumplimiento de los fines de las intervenciones, suspendiendo la ejecucion de las sentencias judiciales dictadas contra empresas intervenidas.

Por cuanto: En los momentos actuales muchos centros de trabajo intervenidos, estan urgidos de que se prorroguen en ellos las intervenciones decretadas por subsistir los motivos que las determinaron, lo que hace innecesario que tal prorroga se dicte en particular con relacion a cada uno de ellos, si con caracter general a ello puede procederse.

Por tanto: En uso de las facultades que le estan conferidas, el Consejo de Ministros resuelve dictar la siguiente:

Ley No. 843

Articulo 1. Se modifica el Articulo Cuarto de la Ley numero 647 de 24 de Noviembre de 1959 que quedara redactado en la forma siguiente:

Articulo Cuarto: El termino fijado para la duracion de las intervenciones dispuestas por el Ministro del Trabajo, en virtud de lo dispuesto en la presente Ley, podra ser prorrogado las veces que fuese necesario para el logro de los fines de la intervencion, mediante Resolucion del propio Ministro del Trabajo.

Articulo 2. Los tribunales no despacharan ejecucion alguna contra empresas que se encontraren intervenidas por el Estado, en tanto dure la intervencion, por obligaciones contraidas con anterioridad a la fecha en que se hubiere dispuesto la intervencion.

DISPOSICIONES TRANSITORIAS

Primera: El Ministro del Trabajo podra, mediante las correspondientes Resoluciones, prorrogar las intervenciones dispuestas al amparo de la Ley, numero 647

de 24 de Noviembre de 1959, antes de la vigencia de esta Ley, cuando fuera necesario para el logro de los fines de la intervencion. —

Segundo: Los procedimientos judiciales que se encuentren en tramites de ejecucion de sentencia a la promulgacion de esta Ley, dirigidos contra empresas que se encuentren intervenidas por el Estado, seran suspendidos en el estado en que se encuentren, en tanto dure la intervencion. —

Los procedimientos judiciales que no hubieren llegado al tramite de ejecucion, continuaran sustanciandose hasta ese momento procesal en que seran paralizados en tanto dure la intervencion.

DISPOSICION FINAL

Se derogan cuantas disposiciones legales y reglamentarias se opongan a lo dispuesto en la presente Ley, la que comenzara a regir a partir de su publicacion en la GACETA OFICIAL de la Republica.

Por tanto: Mando que se cumpla y ejecute la presente Ley en todas sus partes. —

Dada en el Palicio de la Presidencia, en La Habana, a 30 de Junio de 1960.

OSVALDO DORTICOS TORRADO.

FIDEL CASTRO RUZ,
Primer Ministro.

AUGUSTO R. MARTINEZ SANCHEZ
Ministro del Trabajo.

mr/ap.

APPENDIX I

(Translation from Spanish)

Official Gazette. Havana. Published July 6, 1960

Law No. 843

Amendment to the INTERVENTION LAW (647) of November 24, 1959.

I, OSVALDO DORTICOS TORRADO, President of the Republic of Cuba.

Proclaim: That the Council of Ministers has agreed and I have sanctioned the following:

Whereas: Law Number 647 of November 24, 1959, published in the OFFICIAL GAZETTE of the 25 day of the same month, empowers the Minister of Labor, by the procedures laid down therein and in the cases contemplated in its Article II, to proceed to intervention of Enterprises or Centers of Labor in which the normal course of production is obviously impaired.

Whereas: It has been observed that various court proceedings are pending against various intervened enterprises or centers of labor, by virtue of obligations contracted by them before the Intervention Orders; in which proceedings, if the decisions handed down therein were put into effect, the interventions might be rendered ineffectual and the closing of the centers of labor might ensue.

Whereas: Article 222 of the Constitution of the Republic states that it is the duty of the State to orient the nation's economy for the benefit of the people, wherefore, in compliance with this principle, it is fitting to order what measures may be called for, such as seeing to it that the goals of the interventions are attained, suspending execution of the court decisions ordered against intervened enterprises.

Whereas: At the present time many intervened centers of labor need to have the interventions that have been ordered extended therein, since the reasons for ordering them persist, which renders it unnecessary for such extension to be specially ordered for each of them, if a general procedure can be followed.

Therefore: By virtue of the powers vested in it, the Council of Ministers has decided to proclaim the following:

Law No. 843

Article 1.- Article Four of Law Number 647 of November 24, 1959 is amended to read as follows:

Article Four: The term set for the duration of interventions ordered by the Minister of Labor, pursuant to the provisions of the present Law, may be extended as many times as may be necessary to attain the purposes of the intervention, by a Decision of Minister of Labor.

Article 2.- The courts shall not issue any executory decree against enterprises that have been intervened by the State, so long as the intervention is in effect, for obligations contracted prior to the date on which intervention was ordered.

TRANSITIONAL CLAUSES

First: The Minister of Labor may, by appropriate Decisions, extend interventions ordered under Law No. 647 of November 24, 1959, prior to the entry into force of this Law, when so required for attaining the purposes of the intervention.

Second: Court proceedings in the course of execution at the time this Law is promulgated, and directed against enterprises which are intervened by the State, shall be interrupted at the point they have reached, so long as the intervention in in force.

Court proceedings which have not reached the stage of execution shall be continued until that phase of procedure, at which they shall be suspended, so long as the intervention is in force.

EXECUTORY CLAUSE

Any provisions of the law or regulations contrary to the provisions of the present Law are repealed, and the present law shall go into effect from the time of its publication in the OFFICIAL GAZETTE of the Republic.

Wherefore: I order that the present Law be complied with and enforced in all its parts.

Given in the Presidential Palace, in Havana, on June 30, 1960.

OSVALDO DORTICOS TORRADO

FIDEL CASTRO RUZ
Prime Minister.

AUGUSTO R. MARTINEZ SANCHEZ
Minister of Labor.

mr/ap.

APPENDIX J

Resolution No. 20260, of September 15, 1960

RESOLUCION Nro. 20260

Considering provision No. 1156/80, supported by the law 647 of November 24, 1959, in the Department of Intervention of the Ministry and;

WHEREAS: The legal representatives of the Federacion Tabacalera Nacional has been denouncing before this Ministry, the crises implanted in this sector as a consequence of the policies taken by the manufacturers of cigars, cigarettes, and tobacco warehouses, which has caused considerable deterioration in production, the displacement of a great number of laborers and grave injury to the national economy.

WHEREAS: It is evident, the egotistic attitude and frank hostility to the development of the economy of the nation, adopted by these owners in the Tobacco sector and the development of a narrow commercial policy which only seeks higher profits for their own personal gain, has extraordinarily diminished the production for internal consumption as well as that destined for exportation to the markets native to Cuba, this diminishment surpassing the 15 Million units in the first quarter of the current year, as a consequence of the excessive increase in prices.

WHEREAS: The patronizing attitude attempted against the economy of the nation and the workers has been unlimited and has manifested itself in all aspects related to production, from the sale of the raw material which should be held in deposit in order to work the different types of blends, the laxity in acquiring the corresponding types of raw material from the new crops and the total abandonment of the various departments in the factories, has brought as a consequence, considerable deterioration in the quality of the product, which has been losing not only prestige, but also a market in the customary countries.

WHEREAS: The removal of the operating capital in the industry by the owners has further contributed to the ostentatious restriction and limitations of production, carrying on their activities exclusively by means of loans, principally from the States, which indicates the attitude of the owners is consciously directed to provoke a situation of disorganization and paralyzation of the industry with the consequent injury that this represents.

WHEREAS: The cigarette enterprises as well as the rest of the Tobacco magnates have participated in the resistance to elevate the crop, to buy the raw material, and to apply their own economic recourses for the development of these activities, relying for support of this, as allies, upon the large Leaf Tobacco Warehouseman.

WHEREAS: Some of these owners have abandoned their businesses and have left the National territory, leaving numerous debts and many workers unemployed, which constitutes an addition to the employment problem, which the Revolutionary Government and particularly this Ministry must avoid.

WHEREAS: It is necessary to guarantee the supply to the customary markets of Cuba, producing the tobacco in the quality that has always been characteristic of the Habana tobaccos and because of this, it placed upon the Revolutionary Government the necessity of adopting measures for the purpose of normalizing the situation created in the National Tobacco and Cigarette Industry, insuring the stability of the workers in their jobs and the production in general, which precedes the decision to intervene in the tobacco center, those who have concurred to the deeds heretofore expressed and who are: CIGAR FACTORIES; Nigos de J. Cano Y Cia., situated in San Gabriel No. 301, Cerro; Castaneda, Montero, Fonseca, S. A., Galiano 466, Habana; Cifuentes y Cia., Industria 520, Habana; Menendez, Garcia y Cia., Ltda., Amistad 407, Habana; F. Palicio y Cia. S. A.,

Maximo Gomez 51, Habana; Romeo y Julieta Fabrica de Tobacos S. A., Padre Varela 152, Habana; Tabacalera Cubana S. A., Agramonte 108, Habana; Tabacalera Pita Honos. S. A., Estevez 67, Habana; Por Larranaga, S. A., Carlos III No. 713, Habana; Tabacalera Jose L. Piedra S. A., Avenida 57 No. 13402, Marianso; Martinez y Cia., Avenida 51 No. 13606, Marianso; Tobacalera Moya S. A., Bayamo, Oriente; Bauza y Yanes, Agramonte y Republica, Cabaiguan, Las Villas; Roy del Mundo Cigar Co., Padre Varela 852, Habana; Villasmil Santalla Cia., Republica 2118, Artemisa, P. del rio; A. Quintero y Cia. S. L., D'Clouet 16-18, Cienfuegos. — CIGARETTE FACTORIES: Hijos de Domingo Mendez, Clavel No. 13, Habana; Torres Gener Enos, S. A., Meximo Gomez 51, Habana; Calixto Lopez y Cia., Agramonte 702, Habana; Cigarres H. Upmann S. A., 20 de Mayo 520, Habana; Villasmil Santalls y Cia., S. L., Canpanario 1002; Trinidad Enos. S. A., Ranchuelo, L. V.; Tabacalero Cubana, S. A., Princess 202, Habana; Sres. Ranon Rodriguez o Hijos, S. en C., 23 No. 1255, Vedado, Habana; Cia. Immobiliaria Arreyo Arenas, Villas; Triaidad Industrial S. A., Santo Domingo No. 95, Trinidad, L. V.; Cigarrera Nacional S.A., Antonio Maceo y San Mateo, Santa Clara, L. V.; Fabries de Cigarros Camaguey S. A., Camaguey; Distribuidora Montemann S.A., 20 de Mayo 520, Habana. LEAF TOBACCO WAREHOUSES: Cuba Tobacco S. A., Figuras 109, Habana; S. Ruppin Havana Tobacco Co. Inc., Carlos III No. 612, Habana; Rothschild-Samuel-Duigman, S. A., (Havana Tobacco), Dragones 108, Habana; J. B. Diaz y Cia., Paseo de Marti 115, Habana; Leslie Pantin & Son, Escobar 451, Habana; Toranoy Cia., Estrella 157, Habana; Tabacalera Nijos de Diego Montero S. A., Figuras 182, Habana; Custe Terane y Cia., Enrique Barnet 109, Habana; Junco y Cia., Lealtad 1013, Habana; N. Duys & Co., Havana Tobacco S. A., Calle Nena 75, Habana; Garcia y Vega, Virtudes 256, Habana; Tabacalera Severiano Jorge, S. A., Amistad 360, Habana; Jose Torano Y Cia., Avenida Simon Bolivar 152, Habana; Cia. Tabacalera del Caribe S. A., Industria y Barcelona, Habana; Domingo-Mendez y Cia., Cardenas 115, Habana; Cuban Land and Leaf Tobacco

Co., Agramonte 106 y Luyano 204, Habana; Pollack y Compania S. A., San Carlos 516, Habana; Liduvino Vizcaino Valdes, Estrella 619, Habana; Menendez y Cia., S. L., 24 No. 112 entre 11 y 13, Vedado; Menendez y Cia., Amistad 405, Habana; Menendez y Cia., Salud 59, Habana; Samuel Gordon & Compania S. L., Lealtad 612, Habana; Standard Havana Tobacco Co., Antonio Maceo 164, Santa Clara, L. V.

THEREFORE: Having heard the opinion of the Central Planning Congress and using the faculties conferred upon it, by Law 647 of November 24, 1959, modified in its Article 4, by the 843 of June 30, 1960.

BE IT RESOLVED:

FIRST:—Arrange the intervention of those named above by reason of this Resolution, for the period of one year.

SECOND:—Designate interventors from this Ministry in the industries referred to as follows:

(Names of the Interventors assigned to the companies intervened — Including Tabacalera Severiano Jorge, S. A., plaintiff)

THIRD:—Substitute in position and degree, the Directors of the intended industries intervened, with the Interventors designated above, with the power to open bank accounts, open credit, accept, endorse, discount or in any other form negotiate payments, letters or any other commercial documents, solicit or obtain credit, carry on the operation of buying or selling the National or foreign currencies, take money or loans with or without guarantees, stipulate type of interests, maturity, location of payments, class of currency and all other particulars esteemed convenient. Contract when considered opportune for payments of current accounts; Attach, mortgage or in any way encumber any benefits pertaining to the enterprises; buy, exchange, sell or in any other form operate in or with shares, bonuses, or other

valuables; rent vaults, depositing in same and withdrawing its contents liberally; contract conditions of employment with the laborers and employees of these enterprises; also, subscribe collective contracts of work in their name, pay the stipulated wages of employees and laborers; represent the enterprises legally in courts and out of courts and any other facility necessary for the development of its function.

FOURTH:—Order the designated Interventors to take inventory and appraisal of the goods and furniture pertaining to the intervened enterprises.

FIFTH:—Notify all parties in the proper legal procedure.

GIVEN in Habana, MINISTRY OF WORKS, on September 15, 1960.

APPENDIX K

Hickenlooper Amendment to the Foreign Assistance Act of 1964, 22 U.S.C., § 2370(e)(2)

"(2) Notwithstanding any other provision of law, no court in the United States shall decline on the ground of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law in a case in which a claim of title or other right to property is asserted by any party including a foreign state (or a party claiming through such state) based upon (or traced through) a confiscation or other taking after January 1, 1959, by an act of that state in violation of the principles of international law, including the principles of compensation and the other standards set out in this subsection: *Provided,* That this subparagraph shall not be applicable (1) in any case in which an act of a foreign state is not contrary to international law or with respect to a claim of title or other right to property acquired pursuant to an irrevocable letter of credit of not more than 180 days duration issued in good faith prior to the time of the confiscation or other taking, or (2) in any case with respect to which the President determines that application of the act of state doctrine is required in that particular case by the foreign policy interests of the United States and a suggestion to this effect is filed on his behalf in that case with the court."

APPENDIX L

Proclamation 3447

EMBARGO ON ALL TRADE WITH CUBA

By the President of the United States of America
(3 C.F.R., 1959-1963 Compilation, 157)

A Proclamation

WHEREAS the Eighth Meeting of Consultation of Ministers of Foreign Affairs, Serving as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, in its Final Act resolved that the present Government of Cuba is incompatible with the principles and objectives of the Inter-American system; and, in light of the subversive offensive of Sino-Soviet Communism with which the Government of Cuba is publicly aligned, urged the member states to take those steps that they may consider appropriate for their individual and collective self-defense;

WHEREAS the Congress of the United States, in section 620(a) of the Foreign Assistance Act of 1961 (75 Stat. 445), as amended, has authorized the President to establish and maintain an embargo upon all trade between the United States and Cuba; and

WHEREAS the United States, in accordance with its international obligations, is prepared to take all necessary actions to promote national and hemispheric security by isolating the present Government of Cuba and thereby reducing the threat posed by its alignment with the communist powers;

NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States of America, acting under the authority of section 620(a) of the Foreign Assistance Act of 1961 (75 Stat. 445), as amended, do

1. Hereby proclaim an embargo upon trade between the United States and Cuba in accordance with paragraphs 2 and 3 of this proclamation.

2. Hereby prohibit, effective 12:01 A.M., Eastern Standard Time, February 7, 1962, the importation into the United States of all goods of Cuban origin and all goods imported from or through Cuba; and I hereby authorize and direct the Secretary of the Treasury to carry out such prohibition, to make such exceptions thereto, by license or otherwise, as he determines to be consistent with the effective operation of the embargo hereby proclaimed, and to promulgate such rules and regulations as may be necessary to perform such functions.

3. AND FURTHER, I do hereby direct the Secretary of Commerce, under the provisions of the Export Control Act of 1949, as amended (50 U.S.C. App. 2021-2032), to continue to carry out the prohibition of all exports from the United States to Cuba, and I hereby authorize him, under that Act, to continue, make, modify or revoke exceptions from such prohibition.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this third day of February, in the year of our Lord nineteen hundred and sixty-two, and of the Independence of the United States of America the one hundred and eighty-sixth.

[SEAL] JOHN F. KENNEDY

By the President:

DEAN RUSK,
Secretary of State.